IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Sharafat Khan Versus State of Rajasthan

S.B.CRIMINAL REVISION NO. 218/2006
against the judgment & Order dated 23.2.2006 passed by Additional Sessions Judge, Banswara in Criminal Appeal No. 37/2004.

Date of Order : 05/05/2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Mr. P.R.Mehta for the petitioner.
Mr. J.P.S.Choudhary, public prosecutor for the State.

**BY THE COURT**:-

By the instant criminal revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter), the petitioner has assailed the judgment and order dated 23.2.2006 passed by Additional Sessions Judge, Banswara (for short 'the appellate court' hereinafter) in Criminal Appeal No. 37/04, whereby the appellate court partly allowed the appeal filed by the petitioner against the judgment and order dated 15.09.2003 passed by Judicial Magistrate, Banswara (for short 'the trial court' hereinafter) in Criminal Case No. 246/2003

and while maintaining the conviction of the petitioner for the offence under Section 304-A IPC, reduced the sentence of imprisonment awarded by the trial court from one year to six months. By the judgment and order dated 15.09.2003, the trial court convicted the petitioner for the offence under Section 304-A IPC and sentenced him to undergo one year's simple imprisonment and a fine of Rs.200/-, in default of payment of fine to further undergo one month's simple imprisonment. Aggrieved by the judgments and orders impugned, the petitioner has filed the instant criminal revision.

I have heard learned counsel for the petitioner and public prosecutor for the State. Carefully gone through the judgments and orders impugned and record of the trial court.

It is contended by the learned counsel for the petitioner that at the place of occurrence, there was a circle and curve on the road and therefore, the offending bus could not have been driven at a great speed. Learned counsel further submits that even if the bus is driven at a slow speed and a person going ahead is hit, it cannot be said that it was the bus driver who is negligent in causing the accident. Lastly, it was contended that the petitioner has undergone the imprisonment for about two months and therefore, the sentence awarded may be reduced to the period of imprisonment already undergone by him.

Learned public prosecutor appearing for the State supported the judgments and orders impugned and contended that there is direct evidence against the present petitioner of PW-1 Amarji, PW-5 Rajendra Singh as also PW-7 Bhupesh Kumar Jain. PW-5 Rajendra Singh, police constable, who at the relevant time was on traffic duty and witnessed the occurrence, therefore, there is no reason to disbelieve the independent eye witness of the occurrence. According to learned public prosecutor, the prosecution has proved the case against the petitioner beyond reasonable doubt. On the point of quantum of sentence, learned public prosecutor submits that in such matters, a lenient view is not required to be taken.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

PW-1 Amarji and PW-5 Rajendra Singh are eye witnesses of the occurrence. PW-7 Bhupesh Kumar Jain is the owner of the bus which at the relevant time was driven by the petitioner and has proved that on the date of occurrence, it was the petitioner who was driving the bus in question.

PW-1 Amarji stated that near to hospital circle, a bus

was coming at a great speed. A boy was going towards Varandavan Talkies from Gandhi Murti. The bus driver hit the boy from behind and front wheel of the bus ran over the said boy. The boy succumbed to the injuries on the spot. He identified the petitioner as driver of the bus bearing No.2595.

PW-5 Rajendra Singh, police constable, who at the relevant time was on traffic duty, has stated that he was on traffic duty at bus stand. At about 11:00 A.M., he was standing at old bus stand performing the traffic duty, a bus bearing No.RJJ-2595 which was being driven by its driver at a great speed and negligently, hit a boy wearing school uniform. The driver side wheel ran over the school boy who succumbed to the injuries instantaneously. He has identified the petitioner as driver of the said bus. He has also stated that the cycle of the boy got damaged. These two independent witnesses categorically stated that the accident was due to rash and negligent driving of the bus by the present petitioner and therefore, in my view, the prosecution has proved the case against the present petitioner beyond reasonable doubt. There is concurrent finding of fact recorded by both the courts below holding the petitioner guilty of the offence under Section 304-A IPC.

So far as quantum of sentence is concerned, it

appears that the first appellate court has taken a very lenient view by reducing the sentence of imprisonment from one year to six months.

In Dalbir Singh Vs. State of Haryana (2000) 5 SCC 82, Hon'ble Supreme Court held as under :-

> "Bearing in mind the galloping trend in road accident in India and the devastating consequences visiting the victims and their families, criminal court cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause an accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

In State of Karnataka Vs. Sharanappa Basanagouda

Aregoudar, (2002) 3 SCC, 738 held that having regard to the serious nature of the accident, which resulted in the death of four persons, the learned Single Judge, should not have interfered with the sentence imposed by the courts below. It may create and set an unhealthy precedent and send wrong signals to the subordinate courts which have to deal with several such accident cases. If the accused are found guilty of rash and negligent driving, courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the courts should have deterrent effect on potential wrongdoers and it should commensurate with the seriousness of the offence. Of course, the courts are given discretion in the matter of sentence to take stock of the wide and varying range of facts that might be relevant for fixing the quantum of sentence, but the discretion shall be exercised with due regard to larger interest of society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system.

Keeping in view, the above decisions of Hon'ble Supreme Court, the sentence awarded by the trial court and affirmed by the appellate court, cannot be said to be disproportionate to the offence committed by the petitioner and the contention regarding the sentence being excessive is liable

to be rejected.

In view of the aforesaid discussion, I do not find any merit in the revision petition. The revision is accordingly dismissed. The application seeking suspension of sentence also stands dismissed.

**(H.R.PANWAR),J.**

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